In the High Court of Judicature at Madras

Dated: 13.11.2006

Coram:

The Hon'ble Mr.Justice P.K.MISRA
and
The Hon'ble Mr.Justice J.A.K.SAMPATHKUMAR

H.C.P.No.865 of 2006

Manoharan, S/o Palaniappan,
No.5, Padma Colony,
Thiruverambur, Tiruchy. ... Petitioner

Vs.

1. The State, rep. by the
Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai 600 009.

2. The District Magistrate &
District Collector,
Tiruchy District @ Tiruchy. ... Respondents

Habeas Corpus Petition filed under Article 226 of Constitution of India, for issuance of Writ of Habeas Corpus, calling for the records of the second respondent, pertaining to the order made in Crl.M.P.No.61/2006 dated 22.8.2006, in detaining the detenu under Tamil Nadu Act 14 of 1982, as a "Video Pirate" , and quash the same and direct the respondents to produce the detenu, namely, Ananth, son of Palaniappan, aged 28 years, who is detained at the Central Prison, Tiruchy, before this Court and set him at liberty.

For Petitioner .. Mr.O.S.Thilak Pasumbadiar
For Respondents .. Mr.M.Babu Muthumeeran,
Additional Public Prosecutor.

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O R D E R

(Order of the Court was made by P.K.MISRA, J)

Heard the learned counsels appearing for the parties.

2. The order of Preventive Detention on the ground that the detenu is a "Video Pirate" under the Act 14/1982 is being challenged in the present Habeas Corpus Petition.

3. The learned counsel appearing for the petitioner has raised two contentions in support of his case. Firstly, it is contended that there has been delay in disposal of the representation.

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From the records we find that the representation dated 4.9.2006 was received on 5.9.2006 and it was disposed of by the Minister on 15.9.2006. 16.9.2006 and 17.9.2006 being holidays, the letter was prepared on 18.9.2006 and was sent to the detenu on the very same day. It is of course true, that the remarks were called for on 6.9.2006 and the same were received on 13.9.2006, but we find that the remarks were called for through post and sent through post and obviously the interregnum was explained in such a manner. Therefore, we do not find any delay in disposing the representation.

4. The other contention of the petitioner is relating to lack of sufficient opportunity to the petitioner to enable him to be represented through a friend or relation before the Advisory Board, as required under the statute. It is not disputed that the visitors are allowed only on Tuesday and Thursday between 10.00 A.M. and 4.00 P.M. It appears that for the first time on 27.9.2006 a communication was served on the detenu in English intimating that 3.10.2006 has been fixed for the purpose of appearance before the Board. The Tamil translation of such intimation was served on 28.9.2006 at 4.00 P.M.. 28.9.2006 was obviously a Thursday. Therefore, the detenu had no further opportunity to contact his friend or relative. It is thus apparent he was not given adequate opportunity of being represented through a friend or relative before the Advisory Board. Thus, there is violation of his statutory right.

5. In such view of the matter, we are inclined to quash the order of detention. Habeas Corpus Petition is allowed and the detenu is ordered to be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gr.

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To
1. The Secretary to Government,Prohibition & Excise Department,
Fort St. George, Chennai 600 009.

2. The District Magistrate & District Collector, Tiruchy District @
Tiruchy.

3. The Superintendent, Central Prison, Tiruchy.

https://hcservices.ecourts.gov.in/hcservices/

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Govt.
Public [Law and Order] Department,
Fort St. George, Chennai 9.

+ 1 CC To Mr. O.S.Thilak Pasumbadiyar, Advocate SR NO.54379

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